

E-filed 01/5/07

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Attorneys for Defendant
 DEPUTY G.L. ARNOLD

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

RICHARD A. McCLAIN,

Plaintiff,

v.

DEPUTY G. L. ARNOLD, et al.,

Defendants.

Case No.: CV-06-03834 JF

**EX PARTE APPLICATION AND ORDER
 EXTENDING TIME TO FILE
 DISPOSITIVE MOTION**

Action Filed: June 20, 2006
 Trial:

Defendant DEPUTY G. L. ARNOLD hereby applies to the Court ex parte for an extension of time to file summary judgment or other dispositive motion. Plaintiff RICHARD A. McCLAIN is incarcerated and cannot easily be reached.

Such an extension is timely and is necessary to allow additional time to prepare such pleading because defendant DEPUTY G. L. ARNOLD was served with service of Summons and Complaint on June 21, 2007. Our office only received the Summons and Complaint on or about July 20, 2007. At the time our office received the Summons and Complaint, we could not determine whether DEPUTY G. L. ARNOLD had been served. Consequently, on July 20, 2007, defense counsel Randy Andrada sent a letter to the United States Marshall in an effort to determine whether service had been perfected. (Exhibit A). On August 6, 2007, the court entered on the docket that DEPUTY G. L. ARNOLD was served on June 21, 2007.

1 Defendant DEPUTY G. L. ARNOLD filed an answer on August 13, 2007.

2 Counsel for defendant has not yet had the opportunity to confirm the allegations in the
3 Complaint which allege that plaintiff has exhausted his administrative remedies. If there is merit to
4 plaintiff's exhaustion allegations, then defendant needs additional time to obtain the records necessary to
5 prepare a summary judgment motion and to have an expert review of the records.

6 Such an extension is timely and is necessary to allow additional time to prepare a dispositive
7 motion.

8 Defendant DEPUTY G. L. ARNOLD respectfully requests that the Court extend the time for
9 defendant to file a summary judgment or other disposition motion to November 5, 2007.

10 Dated: October 1, 2007

11 ANDRADA & ASSOCIATES

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13 By Brendan Kenny
14 BRENDAN KENNY
15 Attorneys for Defendant
16 G. L. ARNOLD

17 **ORDER**

18 Having considered defendant's ex parte application for additional time to file a summary
19 judgment or other disposition pleading, and finding good cause therefor,

20 IT IS HEREBY ORDERED that defendant DEPUTY G. L. ARNOLD has to and including
21 August 5, 2006 by which to file such pleading.

22 Dated: 10/5/07

23
24
25 Jeremy Fogel
26 JEREMY FOGEL
27 UNITED STATES DISTRICT JUDGE
28

PROOF OF SERVICE

Richard Allen McClain v. Deputy G.L. Arnold, et al.
U. S. District Court, Northern District of California, Case No. CV 06-03834 JF

I, the undersigned, declare that I am over the age of 18 years and not a party to the within action; that my business address is 180 Grand Avenue, Suite 225, Oakland, California; and that on October 1, 2007, I served a true copy of the foregoing document(s) entitled:

EX PARTE APPLICATION AND ORDER EXTENDING TIME TO FILE DISPOSITIVE MOTION; DECLARATION OF BRENDAN KENNY IN SUPPORT OF EX PARTE APPLICATION AND ORDER EXTENDING TIME TO FILE DISPOSITIVE MOTION

on the parties in this action by placing a true copy thereof in a sealed envelope addressed as follows:

Richard Allen McClain, P-60749
 CA State Prison-Avenal
 P. O. Box 9
 520-1-80-L
 Avenal, CA 93204

In Pro Per

- X (By Mail) I caused each envelope with postage fully prepaid to be placed for collection and mailing following the ordinary business practices of Andrada & Associates.
- (By Hand) I caused each envelope to be delivered by hand to the person(s) listed above.
- (By Telecopy) I caused each document to be sent by fax to the fax as indicated above.
- (By Overnight Delivery) I caused each envelope to be delivered by overnight delivery to the person(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 1, 2007, at Oakland, California.


 SHERRY P. ACOSTA